

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 15-1641

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., January 25, 2016 on the Application of **RDC HARBOURTOWNE, LLC** (the Applicant). The Applicant is seeking the modification of a special exception to permit the expansion of the “in play” area of the Harbourtowne Golf Course by approximately 2.883 acres. The proposed expansion will allow the driving range and course to be lengthened. The request is made in accordance with Chapter 190 Zoning, Article VIII, §190-167 D and Article IX, §190-180 of *Talbot County Code* (the Code). The golf course property is 142.44 acres located primarily on Martingham Drive, St. Michaels, Maryland, 21663 in the Rural Conservation/Western Rural Conservation (RC/WRC) zones. The property owner is RDC Harbourtowne LLC, and the property is shown on Tax Map 23, Grid 8 Parcel 1, Tax assessment account identifier 02-107848.

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman; Phillip Jones, Vice Chairman; Margaret Young, member and alternate members Jeffrey Adelman, and Louis Dorsey, Jr., Anne C. Ogletree served as attorney for the Board of Appeals. Jeremy Rothwell, Talbot County Planner I, was in attendance.

The Chairman inquired if all members had visited the site and received affirmative responses.

The following exhibits were offered and admitted into evidence as indicated:

- Exhibit 1. Application for Special Exception and attachment A;
- Exhibit 2. Copy of tax map with subject property highlighted in yellow;
- Exhibit 3. Notice of Public Hearing to be published in the Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing & Adjacent Property Owners List attached;
- Exhibit 6. Special Exception Modification Standards with attachment B;
- Exhibit 7. Revision to Staff Report (revisions in red text) prepared by Jeremy Rothwell on 12/29/15;
- Exhibit 8. Staff Memo with attachments prepared by Jeremy Rothwell, on

12/21/15:

- Exhibit 9. Planning Commission's Recommendation;
- Exhibit 10. Sign Maintenance Agreement;
- Exhibit 11. Site Plan of Golf Course Renovation (full size) prepared by Lane Engineering, LLC;
- Exhibit 12. Site Plans (3 pages);
- Exhibit 13. Letter from the Critical Areas Commission, Jennifer Anderson dated 12/16/15;
- Exhibit 14. Authorization letter from Richard Cohen, President;
- Exhibit 15. Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 16. Aerial Photo;
- Exhibit 17. Site Visit Photographs 12/01/16 by Chris Corkell
- Exhibit 18. Board Decision Appeal No. 655;
- Exhibit 19. Board Decision Appeal No. 944;
- Exhibit 20. Email from David Prevost dated 01/06/16;
- Exhibit 21. Email from Suellen and John Gargalli, dated 01/06/16;
- Exhibit 22. Letter from George Raitt dated 01/16/16
- Exhibit 23. Memorandum from Michael Pullen, County Attorney;

The Chairman also admitted the following exhibits during the hearing:

Applicant's Exhibits 1A, 1B and 1C, enlarged copies of various portions of the site plan.

Mr. Shortall requested that those who might wish to testify identify themselves and be sworn. Several members of the public were then sworn. Bruce Armistead advised the Board that he and Mr. Zachary Smith, 114 Bay Street, Easton, MD 21601 were representing the Applicant, RDC Harbourtowne, LLC.

Mr. Zachary Smith gave the background of the application. He and his firm represent the Applicant, **RDC Harbourtowne, LLC**, the owner and operator of the Harbourtowne resort, including the hotel and golf course. The Applicant wants to renovate and improve the property. Unfortunately, both the hotel and the golf course uses are legal non-conforming uses in their respective zoning districts<sup>1</sup>, so there is not a

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<sup>1</sup> The Staff Report, Exhibit 8, authored by Mr. Rothwell summarizes the history of the project as follows:

The Martingham development is unique in Talbot County. Martingham was developed in 1970 as a new concept, a multi-use development. The creation of Martingham required that the County Commissioners change the zoning designation from Waterfront to a combination of Suburban and Apartment-Multiple Dwelling zones. The entire golf course property was included in the first approved plat. The clubhouse and golf course were among the first improvements constructed on site. The whole Martingham project can be described as being similar to what is now called a Planned Unit Development (PUD).

lot that can be done under the existing ordinance as it prevents substantial change to nonconformities.

The Applicant has approached the County with its concerns, and the County has indicated a willingness to address those concerns in legislation, which would allow the owner to propose a redevelopment plan, but not guarantee that it would be accepted. The redevelopment plan will be presented to both the Council and the community for input. If the final redevelopment plan is in the best interest of the County and its citizens, the redevelopment will be permitted. The star legislation is currently working its way through the county's legislative process. It was passed in December but will not become effective until late February of this year.

Mr. Smith explained that the current application to the Board has been dictated by timing, as the process enabled by the star legislation will take some time to complete. The entire golf course is now closed for renovation. The non-critical area portion requires no administrative action, and is currently under construction, as the owner intends to redesign and refurbish the entire 40 year old course. It would not be possible to redevelop the critical area portion of the course this year if the Applicant has to wait until the pending star legislation becomes effective and the process requiring community input is carried to completion. While the Applicant agrees that presenting the entire package at

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In 1974 the zoning ordinance was revised and the parcels involved were rezoned to W-2, a classification that permitted golf courses by special exception. A 1987 application, No. 655, requested a special exception to expand the clubhouse and was granted. Exhibit 18.

In 1989 the County adopted its first Critical Area Ordinance rezoning the golf course parcel within the Critical Area to RC – Rural Conservation and designating the parcel as Critical Area RCA – Resource Conservation Area. Golf courses and country clubs were not permitted in the RC zone, and those improvements became legal non-conforming uses at that time.

In June of 1991 the golf course property outside the Critical Area was rezoned to RAC-Rural Agricultural Conservation. Golf course and country club uses were permitted as of right in that district.

In 1995, Application No. 944, the resort owners asked for and received a special exception to expand the existing community sewage facilities located on the tax parcel currently the subject of the this application. *See*, Exhibit 19.

In 2009 the Council adopted the 2009 zoning ordinance which rezoned the portion of the Martingham property outside the Critical Area to WRC – Western Rural Conservation. That district continued to treat Golf Courses and Country Clubs as a use permitted as of right.

In March 2015 pursuant to a request from Mr. Smith, the Planning Officer issued a letter to be treated as a certificate of non-conformity finding that the golf course was a valid non-conforming use having been created prior to the Critical Area law. The current owner purchased shortly thereafter. Later that year the Planning Officer was asked to determine the “in play” area of the golf course. She did so, finding that the total land within the critical area of the subject parcel was 28.818 acres, and that expansion of 10% into the “out of play” area of the parcel was permitted under the *Code*. The “out of play” area included the clubhouse, swimming pool, tennis courts and parking area. *See*, Exhibit 8, Attachments

one time would be preferable, thus obviating the need for a hearing before the Board, the need to be able to commence work immediately to take advantage of the spring growing season requires this application. Mr. Smith also noted that the application complies with the ten percent (10%) limitation imposed by the *Code* on the expansion of nonconforming uses.

Mr. Bill Stagg, of Lane Engineering, 117 Bay Street, Easton, MD 21601 was introduced to further explain the project. Mr. Stagg, previously sworn, introduced Applicant's exhibits 1A, 1B, and 1C noting that they were enlarged portions of the site plan. He directed the Board's attention to Applicant's Exhibit 1B noting that in the lower left there is property between the green shaded area and the road that has been designated as not being "in play". The clubhouse, tennis courts and swimming pool currently occupy that area. Under the *Code*, the land available for expansion cannot exceed ten percent (10%) of the area of the 'sub-parcel'<sup>2</sup> in the RC- Rural Conservation zone.

On Exhibit 1C Mr. Stagg pointed out the three hundred foot (300') buffer shown as a red dotted line. The project will be landward of that line. He also pointed out the areas of expansion in green on exhibit 1C. The project calls for the demolition and removal of the clubhouse, tennis courts and swimming pool. Applicant's Exhibit 1A is an enlarged view of the same area. The areas shown in color are the areas of expansion.

Mr. Stagg noted that the county requires that each site plan stand on its own, and for that reason, the parking area has not been included, but will be reconfigured to provide the required parking for the course and new improvements. He explained that the 18<sup>th</sup> hole will be lengthened, a pond reconfigured and there will be a shift in the location of the green. The expansion will require that the clubhouse, tennis courts and swimming pool will have to be demolished. Their removal will substantially reduce the total lot coverage. All of the renovations will occur outside the three hundred foot (300') buffer. Fifty-seven (57) trees will be removed. Mitigation is required on a 1:1 basis. He emphasized that the Applicant would like to ensure that the course is redone this year. If the Applicant waits until the process envisioned by the state legislation is complete, it will

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<sup>2</sup> The entire golf course is designated as one tax parcel. It is subdivided by various roads and each subdivided parcel (sub-parcel) is treated separately for the purposes of determining the size of the "in play" area. The sub-parcel that is the subject of the application contains 28.8 acres in the RC zone.

have to wait at least nine (9) months to twelve (12) months before it can do what is needed.

Mr. Jones inquired about drainage inside the three hundred foot (300') buffer. The existing improvements drain into a culvert and then discharge into a wetland. He wished to know if the drainage would remain the same.

Mr. Stagg responded that it would, but the removal of the impervious surfaces would greatly reduce run off. Drainage and stormwater will be managed. The Applicant plans to channel water into the ponds so that sediment would be contained in the ponds before water is discharged into the wetland area. The goal is to design a plan to manage both the quantity and quality of the discharge. There is an analysis of existing drainage going on currently so those involved can better understand the current drainage and plan for the future.

Ms. Young asked about the existing sewage system for the improvements to be removed. She wished to know if all the infrastructure would have to be removed. Mr. Stagg advised that the existing sewage infrastructure would be abandoned. Some of the piping might have to be removed, but most would remain buried. Both water and sewer would be capped, probably close to the roads so that they would not interfere with the redevelopment.

Mr. Adelman asked about the County regulatory scheme and how it would be enforced. Mr. Stagg responded that the Talbot County Department of Public Works (DPW) handles enforcement of the county's stormwater ordinance. The ordinance requires that there be an approved plan for disturbances over five thousand (5,000) square feet.

Mr. Adelman queried if the stormwater management was addressed as a part of the special exception process. It was explained that the agencies were working with DPW, Mr. Stagg and the developer to address those issues. Mr. Rothwell added that as this project requires a site plan, those issues were normally addressed in the Technical Advisory Committee (TAC) comments.

Mr. Adelman asked if the Applicant was aware of the Critical Area Commission (CAC) comment letter, and if it had a position on the recommendations outlined in the letter. Mr. Stagg responded that the Applicant was aware of the letter that outlined three

things: (1) no redevelopment within the three hundred foot (300') buffer; (2) the requirement of a nutrient management program controlling the application of herbicide and fertilizer; (3) the requirement that the golf course have an integrated pest management system. He explained that the golf course superintendent had to be licensed to apply herbicide, pesticide and fungicide and had been making applications in accord with a plan that has been in place for the last dozen years. There is already a nutrient management plan in place. He noted that fertilizers have been steadily improved over the last two decades. They are very pricey, so they are only applied when and as necessary, subject to the usual regulations – no application between December 1 and March 1. Given the improvement in the product, one customarily sees a more frequent application as a much reduced rate.

Mr. Adelman summarized the testimony stating that he felt the current operation complies with the guidelines in the CAC letter. Mr. Stagg concurred, adding that it was the Applicant's intention to remain in compliance.

Mr. Dorsey wanted to know if Mr. Stagg had discussed the environmental certification requirements with the owners. Mr. Stagg responded he had not, but could do so. He noted that there were a number of national certifications. As an existing golf course, most were already in place.

The Chairman inquired if the existing improvements, clubhouse, tennis courts and pool were going to be replaced on the property at some point. Mr. Smith responded that the Applicant did not need the Board's approval to demolish those structures. Mr. Shortall agreed, but thought the public might want to know the plan. Mr. Smith stated that the owner planned to replace the clubhouse, but location and design had not been decided. As far as he knew no decision had been made regarding the tennis courts and pool.

Mr. Jones commented that the location currently occupied by the improvements to be removed was not "in play" but the remainder of the golf course was, including the ponds previously used for sewage treatment. He wished to know if the owner could convert areas considered "in play" in the RC zone to 'out of play' areas.

Mr. Stagg responded that such development was not possible in the RC zone, but could be permitted by special exception in the WRC zone.

Mr. Rothwell confirmed that if the structure was not existing in the RC zone, it could not later be built in that zone without recourse to the new state legislation.

Mr. Stagg revisited the matter of the effluent pond near hole 5 adding that the sewage would be pumped out and is to go to the St. Michaels sewage treatment plant. The pond is going to be decommissioned for effluent staging and will be reconfigured to work better with the golf course.

Ms. Young asked for clarification concerning an exhibit. Mr. Smith responded that the exhibit she referred to was attached to the Applicant's submission as a part of the notice requirement and showed properties notified of the hearing. The yellow shows the golf course in its entirety, the yellow hatched portion shows the sub-parcel that is the subject of the application, and the remaining tan colored parcels are properties notified of the application and are essentially all the properties touching the golf course.

Mr. Shortall stated that the Applicant had answered all of the questions posed to special exception applicants in writing and asked if the Applicant wished to elaborate on its answers. Mr. Smith stated he would be happy to do so, and moved that the written responses become a part of the Applicant's testimony. Mr. Shortall admitted it as substantive evidence. He then asked the members if they had any questions.

The Vice-Chairman had two issues. He first queried if the application was actually consistent with the Talbot County Comprehensive Plan, (the *Plan*) noting that the zoning ordinance prohibits golf courses in the RC- Rural Conservation zone. He was hoping Mr. Smith might elaborate on why he felt it was consistent in this case.

Mr. Smith commented that Harbortowne golf course was unique. It was first built in the 1970s when there was no RC zone or Critical Areas designation, and it was a use permitted as of right. The whole Martingham development was akin to a planned unit development (PUD). Although the county did not have legislation authorizing PUD development at the time, there was a resolution approving the entire Martingham project. When the County enacted its critical areas ordinance in the eighties the area was rezoned RC, a designation which universally prohibited golf courses. He believed that the state has relaxed that standard and does now permit golf courses in the RCA for jurisdictions that want to allow them. Talbot County has not changed its ordinance so golf courses are still prohibited in that zone.

Mr. Smith emphasized that this golf course was established before the advent of the critical areas legislation and the 1989 Talbot County Zoning Ordinance implementing the state critical area policy. It is a valid non-conforming use. He felt that since one of the principal goals of the *Plan* is to preserve farmland and open space, redeveloping the existing golf course is better land use than establishing a new one on agricultural lands.

Mr. Jones agreed that the existing area is more nonconforming now due to the existing structures and because it has more lot coverage. However, the Vice-Chairman noted that removing the existing structures was actually diminishing the recreational uses available to members of the community. He opined that such action was directly in conflict with the dictates of the *Plan*, ' 9.1, since ' 9.3 mentions the golf course, pool and tennis courts specifically.

Mr. Smith explained that the owner had no obligation to keep the tennis courts and pool, and the golf course was staying. The golf course provides an opportunity for recreation, so that the renovation was still consistent with the overall recreational element of the *Plan*.

Ms. Young commented that there were references throughout the Applicant's responses to the warrants alleging economic benefits. She wanted Mr. Smith to identify and discuss those benefits. She was also concerned about increases in traffic the renovations might cause.

Mr. Smith chose to first comment on the traffic issues. He explained that the use of the property was an 18 hole golf course, and that such a use would accommodate only a certain number of people – pretty much the same number that had used it prior to its closure. With respect to the economic issues, the owner was getting ready to invest a significant amount of money to renovate the property. The new course will be designed by a world class designer. The improvements will enhance the value of the course to the County and the surrounding properties.

Ms. Young was concerned about additional traffic and the loss of parking. Mr. Smith stated that there was no plan to eliminate existing parking. The *Code* has standards for golf course parking, three (3) parking spaces per hole. The existing parking complies with those regulations. All of the parking that is currently there will remain.

Mr. Stagg added that this is a forty (40) year old facility, and that without



renovation it will continue to deteriorate. The owner is willing to invest substantial sums to make improvements. He explained that the golf course is already heavily used and cannot handle much more play than it does today. The improvements will make it a state of the art facility, attracting more visitors who will spend money in the County. It is anticipated that the improvements will generate an economic boost to the County. The alternative is that the course will continue to decline if nothing is done.

Ms. Young believed that the words 'championship course' were being used to describe the new course. Mr. Stagg stated that the course was already a championship course, but that the redesign would have an architect's name associated with the course and would make playing the course more attractive. It will be modernized, with new turf that doesn't take as much fertilizer or water.

Ms. Young asked if there would be large numbers of spectators. Mr. Stagg responded that the facility doesn't have the necessary size to host large tournaments. Even a tournament the size of a college tournament would be difficult. He did not see spectators as an issue.

Ms. Young then summarized the economic benefit discussion stating that she believed that forestalling deterioration was the economic benefit contemplated. Mr. Stagg concurred in part, but characterized the project as replacing an aging facility with a "brand new" facility that would attract more visitors who would spend money in the community.

The loss of the clubhouse was troubling to Ms. Young. She could not envision a golf course without a clubhouse. Mr. Stagg responded that there would be a clubhouse, but that it would have to be applied for and authorized under the new legislation.

Mr. Stagg's comments caused Ms. Young to observe that this whole application seemed to be a question of timing. Had the Applicant waited for the star legislation to become effective, the hearing before the Board would have been unnecessary. Mr. Smith replied that the Applicant could have waited for the star legislation, and that would have been the preferred path. Unfortunately, the timing of an application under the star legislation did not suit the owner's timeline for renovating the course.

Mr. Rothwell added that the effective date of the star legislation would probably be March, as the legislation had to go to the CAC for approval before it becomes

effective. Mr. Smith commented that once the legislation becomes effective, the first presentation of the entire redevelopment plan must go to the community, so that community feedback could be addressed before proceeding to the Planning Commission and eventually to the County Council.

Ms. Young noted that once the Board approves the application the owner could commence demolition. Mr. Smith corrected her, explaining that demolition could start tomorrow provided a demolition permit was obtained. The sole question for the Board is whether the Applicant could expand into the 'out of play' area where the existing improvements are located as shown on Applicant's exhibit 1A and the site plan, Applicant's Exhibits 11 and 12.

Mr. Dorsey stated that he had only seen one letter in opposition to the demolition of the various improvements. Exhibit 22. He wished to know how the Applicant had notified all Martingham residents of the proposed action.

Mr. Smith explained that the project had been properly advertised according to County regulations, and that the Applicant had contacted the president of the homeowner's association. Notice of the proposal was distributed via the homeowner's association email chain. The Applicant has recognized that there may be lingering questions to which it will respond when it presents the overall plan. The Applicant has already met with the community, answered those questions it has been able to answer, and made note of those questions still to be answered. It will answer those questions as soon as it is able to do so.

Mr. Armistead asked to augment the response to Mr. Dorsey's concern. He informed the Board that the star legislation sets the parameters under which any new proposal can be brought forward. For six (6) months the architect has been asking for information that will allow planning to move forward, but it was only after the legislation was passed on December 22, 2015 that the rules were established.

Mr. Shortall asked if the Board had additional questions. Hearing none he asked if members of the public had questions or concerns.

Mr. Headley Batters, 9544 Martingham Circle, St. Michaels, MD 21663, was sworn. He had two (2) comments. He was pleased that the Applicant wished to renovate the course, as it was run down, so he was not opposed to the project. However, he took

issue with Mr. Smith's answer about the loss of the tennis courts and pool. In 2015 the community had the golf course, pool and tennis courts. In 2017 they will have the golf course, and no commitment concerning anything else. When he moved to the area, the fact that those improvements existed was a plus, and will be disappointing if they are not replaced. He was hoping for a commitment from the owner, but one has not been forthcoming. The residents are losing facilities without a commitment that the loss will be corrected.

In response to Mr. Shortall's request for his comments, Mr. Armistead reiterated that the replacement had yet to be determined. Unfortunately, because of the star legislative process the Applicant is not yet able to respond to that question.

Mr. Shortall added that the Board does not have the authority to address that issue. He explained that the Applicant could remove those improvements anytime without replacing them. The Board simply has to determine if the Applicant can expand the course into the area where those improvements now exist.

Mr. Robert Craig, 9827 Martingham Circle, St. Michaels, MD 21663, previously sworn, testified that an area that has not been addressed is the provision of adequate restroom facilities for the course. Backyards are frequently used as a relief spot throughout Martingham. This request is taking away at least half of the sanitary facilities available, and at the current time there is no evidence of additional restroom facilities being provided anywhere on course. Additional facilities are a community need, as the current situation is a nuisance, and someone needs to ensure the situation is corrected.

Mr. Armistead replied that the facilities requested must be housed in a structure, and cannot be part of this application. Hopefully by the time the star legislation plan goes into effect this issue can be addressed. Mr. Armistead commended Mr. Craig for raising the issue so that it could be considered in the planning process.

Mr. Stagg added that in the week prior to the Board's hearing the Applicant's planning group was starting to discuss on-course restroom facilities and where they might be located to resolve the problems Mr. Craig outlined.

Mr. Jon Le Towt, president of the Martingham Property Owners Association testified that he has a new appreciation for the questions that have been asked throughout the process leading up to the redevelopment of the Martingham golf course and facilities.

As the board of the homeowners association has not had the opportunity to meet to take a position prior to this Board's hearing, his comments are his individual comments.

He opined that the County, St. Michaels and the Martingham community should all be grateful that a new owner/developer with a good track record wants to make something of Harbourtowne. The course is underplayed, the clubhouse and the Inn itself are in great need of renovation. Both projects will be an economic enhancement to the community. Additional hearings could put in jeopardy the reopening of the course now scheduled for spring 2017, and that would not be in the best interest of the community. He added that he feels the application before the Board will allow the course to open on schedule, and that the entire project would be a good thing for the community.

The Chairman asked if there were additional members of the public wishing to be heard. There was no response. He then invited Mr. Smith to make a closing statement.

Mr. Smith began his closing by reminding the Board that the exact request before it was to expand the 'in play' area of the course by 2.883 acres situated where the structures are now located. The application before the Board will permit the Applicant to move forward with the golf course renovation while the larger redevelopment plan makes its way through the necessary channels. Mr. Smith noted that the application has received the unanimous approval of the Planning Commission. Exhibit 9. He did note that the staff report recommending approval, Exhibit 8, had a number of conditions, and that condition number four (4) should be deleted based on the County Attorney's memorandum. Exhibit 23.

No additional members of the public wished to speak following Mr. Smith's closing. Mr. Shortall opened discussion by the Board.

Ms. Young expressed her disappointment that the Board was not able to review the entire project. Instead it has to look at what appears to be a very small part of the redevelopment. She found it difficult to decide this request without being able to discuss the entire project -- she observed that there is the potential it may all fall apart. At least the clubhouse should be required to be replaced somewhere on the property. She remained concerned about traffic, as there are multiple access points for the course, and the issue of traffic has not been addressed for those areas. There are simply too many open questions for her approval as she does not know how the residents will be affected.

Mr. Shortall felt this application was made knowing that the star legislation does not take effect for two (2) months, and it may take six (6) months or more before the Applicant can do anything. If it waits that long, it will certainly be 2018 before it can open the course. Being involved in agriculture Mr. Shortall was aware that it takes time to prepare the ground, and the Applicant would lose 2016 if it waited for the star legislation. He understood the application to be dictated by the timing issue.

Mr. Armistead acknowledged that timing was the sole reason for the Applicant's request.

Mr. Jones agreed with both Ms. Young and Mr. Shortall. He acknowledged that the request was very narrow, dealing with the expansion of the driving range, and the first and eighteenth holes. The area shown on the site plans is the logical place to do the expansion. That choice has consequences, which prompted him to ask the questions concerning the *Plan*. However, it is the Planning Commission that is the steward of the *Plan* and he will defer to their judgment. He candidly recognized that on balance, most projects do not meet all the goals of the *Plan*, as the *Plan* covers a lot of different topics. The Planning Commission has looked at this request, and recommended it, *see*, Exhibit 9, and, in this case, he would go along with their decision.

Mr. Jones also pointed out that in his memo to the Board, Exhibit 23, Mr. Pullen has stated that the Martingham road uses are not controlled by the County and are not a proper subject for the Board to require as a condition of approval. The CAC has also suggested some conditions based on their policies, but those conditions don't seem to be required by state law, have not been seen by or explained to the Board, and are not required by the County. Although he applauded the environmental benefits of the CAC suggestions, Mr. Jones felt strongly that he could not vote for something he had never seen – a written description of the policies. For the same reasons Mr. Pullen has articulated, he recommended that the CAC conditions should be not be required as conditions of approval and should be deleted.

Mr. Dorsey expressed that he had some concerns with the project. However, he recognized that the Board has no authority to do anything about the removal of the structures or whether they should be replaced. He stated that the only issue he has considered is the expansion of the "in play" area. Based on the testimony presented by

Mr. Stagg, the Applicant's written answers and the information in the staff report, he believed the Applicant has met all the requirements for the special exception, so he would approve the project.

Mr. Adelman agreed with the general consensus that it would be interesting and helpful to know the specifics of the larger redevelopment plan, but the Board's authority is limited to a narrower question, the expansion of the "in play" area in the vicinity of holes 1 and 18.

The latest staff report, although revised, still has condition 4. It should be deleted based on the Pullen memo. It also contains condition 5, regarding golf courses in the RCA as suggested by the CAC. Mr. Adelman agreed with Mr. Jones, that condition 5 should be deleted, emphasizing that he is in favor of the guidelines defined in that condition, but doesn't know what the policy is and doesn't believe that the County can impose a policy not articulated in State or County regulations as a condition of approval on this special exception.

The Chairman summarized Mr. Adelman's comments stating Mr. Adelman proposed that the Board should impose conditions 1-3 contained in the staff report on the grant of the special exception. Mr. Adelman agreed that was his proposal.

Ms. Young pointed out that neighboring properties have to be considered under the requirements of the *Code*. Neighbors are going to lose the clubhouse, pool and tennis courts. They may anyway, but they certainly will if the expansion is approved. Impact to the neighbors is something the Board must consider. There is no commitment that these structures will be replaced. There is, for that reason, inadequate information upon which the Board can act. It should either delay the decision or deny it. She noted that if there were no structures she would not have the same concerns. The structures are there to serve the community.

Mr. Shortall commented that unfortunately the Board does not have the right to tell the developer he cannot demolish the facilities. The facilities could be demolished because the developer does not want the liability associated with their use. Its decision to demolish is not predicated on an expansion.

Ms. Young reiterated that she believed the Board had to consider the neighbors.

Mr. Adelman stated that he understood her concern for the neighbors, but he felt

this was a private club, not a public recreational use.

Ms. Young asked if the argument was that the neighborhood doesn't matter in the Board's decision.

Mr. Jones replied that the facilities were private, and although there was some relationship with the Martingham development, that relationship was controlled by the rules and regulations of the development, which are private concerns.

Mr. Dorsey commented that he understood the concerns Ms. Young had raised, and would be more concerned if there were substantial opposition to the proposal based on property value. He noted that there did not seem to be that sentiment.

Mr. Jones reminded the Board that it had dealt with a special exception approximately a year ago dealing with a racetrack near the landfill. It was turned down, not on the merits, but on the provisions Ms. Young is talking about in Chapter XX -- not having enough information. The difference between the two is the former involved public or general law, not private arrangements between private parties. The Board may and has turned things down for lack of information. He noted that for those who do not play golf, there is a big difference in recreation value. While one can appreciate open space, there is an enormous difference between that and a pool and tennis courts. He hoped the Applicant would keep that in mind.

The Chairman recognized other members of the audience who asked to testify.

Ms. Alice Craig, 9827 Martingham Circle, St. Michaels, MD 21663 was sworn by the Chairman. She explained that she and her husband had both played golf earlier in their lives, and the course had been a beautiful little course. She had reviewed the plans and talked to others and felt the community did not really know what the developer had in mind. The expanded driving range is huge, and the 18<sup>th</sup> green will be right in the middle of what is now the clubhouse. She was concerned because there is not enough room in which to put a new clubhouse with its accessory structures. Parking is insufficient during tournaments with cars parked on the road owned by the homeowners association.

Ms. Josephine Batters, 9544 Martingham Circle, St. Michaels, MD 21663 was sworn and reminded the Board that the absence of a number of homeowners might be due to safety concerns related to the recent blizzard rather than a lack of interest in the matter.

A lot of residents are very happy that the Applicant has purchased the course, as it was dying a slow death. They would like to have input, and are concerned over losing amenities. She and her husband bought thinking that they had the golf course, a pool and tennis courts and that they were buying into a resort type community. They now feel that those attractions have been taken away.

Mr. Rothwell asked to comment on Ms. Young's concerns. He stated that the staff, too, was concerned and had many questions for the Applicant. Those questions have shaped some of the TAC comments, i.e. the maintenance of parking areas. Golf courses are very complicated and expensive facilities. The current application ensures that the bare bones of the golf course will be maintained in the unlikely event that the Applicant pulls out of the project. He explained that the current application is, in some respects, a test for the Applicant -- to show its commitment before applying to the Planning Commission and County Council for its plan under the star legislation. If the Applicant does a poor job working with the community during this initial period, it will find the road forward to be significantly more difficult. Approvals will be harder to obtain under the star legislation. The current proposal provides an incentive for the developer to work well with the community.

Based on the Applicant's written responses, the testimony and the evidence presented, with regard to the special exception permitting expansion of the nonconforming use, the Board finds that:

1. The public hearing was properly advertised and posted, and that the adjacent land owners were properly notified. Exhibits 3, 4, 5 and 10.

2. The Applicant has received favorable recommendations from the Planning Commission, Exhibit 9, for the reasons documented in Exhibits 7 and 8, the Planning Staff Reports authored by Mr. Rothwell.

3. The existing property use, that of a golf course or private club, with its associated amenities, tennis courts and a pool, is a valid non-conforming use having been established, in 1970, a decade prior to the enactment of the critical areas legislation and the Talbot County Critical Areas Ordinance.

- a. The zoning designation was subsequently changed to W-2 in 1974, at which time golf courses and private clubs were permitted by special exception. The clubhouse



was subsequently expanded by special exception in Appeal No. 655, Exhibit 18.

b. The 1989 zoning ordinance rezoned a portion of the golf course within the critical area to RC – Rural Conservation and designated as a portion of the RCA – Resource Conservation Area. That zone prohibited golf courses. The 2009 zoning ordinance retained the RC- Rural Conservation zoning on the critical area portion of the golf course that is the subject of this appeal.

c. The Applicant, through counsel requested a certification of the nonconforming use pursuant to *Code*, '190-166 A. By letter dated February 23, 2015, the Planning Officer certified that the golf course use is a valid nonconforming use. Attachment to Exhibit 8, Staff Report.

4. A valid nonconforming use not involving structures may be expanded by no more than 10% of the site area existing at the date the area became nonconforming. *Code*, §190-167 D (3). The golf course became non-conforming on the adoption of the 1989 zoning ordinance establishing the RC- Rural Conservation district.

5. By letter dated August 19, 2015, the Planning Officer ruled that the “in play” area of the golf course located on Tract 2 Parcel 1 could be expanded into the ‘out of play’ area on that parcel by ten percent (10%) of the total critical area acreage on that parcel or 2.88 acres.

6. To accomplish the expansion the Applicant proposes that it must demolish the clubhouse, tennis courts and pool situated on the 2.883 acre parcel. The Board notes that the Applicant, as the owner of the parcel, could apply for and obtain a demolition permit even if there were no expansion proposed.

7. The *Plan* contemplates that future development in the Resource Conservation Areas should result in areas characterized by open space, agriculture and forestry. This proposal is to redevelop a portion of an existing golf course that is a valid nonconforming use. Open space will be maintained, and slightly increased as the proposal calls for the removal of the structures on the sub-parcel, thus increasing the open space. The proposed redevelopment plan will also reduce lot coverage. It is anticipated that the redesigned golf course will attract additional tourism and will generate additional revenue for the County and the local community.

8. Although the golf course use is currently not permitted in the RC-Rural

Conservation zone, at the time the use was established it was permitted in the Suburban zone or subsequently by special exception in the W-2 zone. Currently the golf course is a valid nonconforming use in the RC-Rural Conservation district and pursuant to §190-164 A and B, the nonconforming use is allowed to continue, but expansion is restricted in size. The Planning Officer's certification limits the expansion to ten percent (10%) of the area of the sub-parcel within the critical area or 2.88+/- acres.

9. The application seeks permission to redevelop an area currently devoted to the clubhouse, tennis courts and pool. While the Board recognizes that the improvements to be removed were amenities that were considered by purchasers in the development, no structures are planned for the redevelopment area. The existing clubhouse will be replaced somewhere on the property, but exact specifications and location are unknown at this time. No decision has been made with respect to replacing the pool and tennis courts. The golf course use currently located at the site will remain.

10. The expansion of the "in play" area will have no additional impact on existing properties. The redesign of the golf course will result in improved drainage and less run off. There will be no additional noise, odor, or glare.

11. The redevelopment of the area is expected to have no adverse impact on public services, schools, water or sewer facilities. Existing parking will remain, and the redevelopment is not expected to generate any additional traffic. Existing private roads currently handle the existing facilities, including the golf course pool and tennis courts.

12. The proposed project will not diminish the required parking for the golf course use. The existing number of spaces exceeds that required by the *Code*.

13. The Applicant has received approval for its Forest Preservation and Forest Conservation Plan. Changes will have to be submitted and approved prior to being implemented. No adverse effect on wildlife or habitat is expected.

14. The golf course use is existing, and the redevelopment will not affect adjacent agricultural uses.

For the reasons set out in the Board's findings, Mr. Jones made a motion that the expansion of the golf course "in play" area be approved subject to the following conditions:

A. The Applicant shall be required to obtain the necessary approvals from all

local, state and federal agencies as applicable for all future phases of construction, including the construction of a new clubhouse and/or the expansion of the existing 'Golf Course and Country Club ' use as set forth in the provisions of the *Code*.

B. The Applicant shall be required to obtain Minor Site Plan approval from the Planning Officer for the reconfiguration of the existing golf course on the subject parcel as required by Code §190-184.

C. The Applicant shall make applications to, and follow all rules, procedures and construction timelines outlined by the Office of Permits and Inspections for new construction.

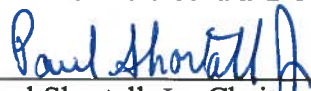
Mr. Dorsey seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 4-1, with Mr. Shortall, Mr. Jones, Mr. Dorsey and Mr. Adelman voting for approval and Ms. Young voting against. .

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS,  
BY THE TALBOT COUNTY BOARD OF APPEALS,

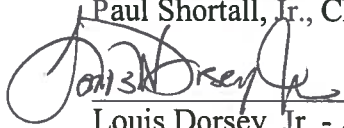
RESOLVED, that the Applicant, **RDC HARBOURTOWNE, LLC**, (Appeal No. 15-1641) is **GRANTED** the requested special exception for expansion of the nonconforming use consistent with the evidence presented to the Board of Appeals, and subject to the aforementioned conditions, by vote as previously noted.

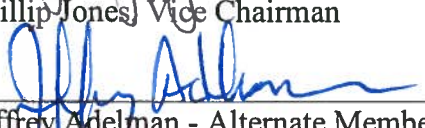
GIVEN OVER OUR HANDS, this 24th day of February, 2016.

**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
Phillip Jones, Vice Chairman

  
Louis Dorsey, Jr. - Alternate Member

  
Jeffrey Adelman - Alternate Member

  
Margaret Young, Member